

COMMITTEE AMENDMENT FORM

DATE: 03/29/ 05

COMMITTEE	<u>CITY UTILITIES</u>	PAGE NUM. (S)
ORDINANCE I. D.	<u>#05-O-</u>	SECTION (S)
RESOLUTION I. D.	<u>#05-R-0608</u>	PARA.

AMENDS THE LEGISLATION BY ADDING TWO AGREEMENTS MARKED AS "EXHIBIT A" AND "EXHIBIT B".

A RESOLUTION

BY COUNCILMEMBER NATALYN MOSBY ARCHIBONG

Natalyn M. Archibong *Demi Starnes*

AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION CONCERNING CERTAIN PORTIONS OF MORELAND AVENUE (STATE ROUTE 42), AND AN AGREEMENT WITH TREES ATLANTA, INC. TO ASSUME THE CITY'S OBLIGATIONS AS SET FORTH IN THE RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT; AND FOR OTHER PURPOSES.

WHEREAS, the development of certain real property owned by The Sembler Company is located in the City of Atlanta at Moreland Avenue between Hardee Street and Caroline Street; and

WHEREAS, Moreland Avenue is a state route under the control of the Georgia Department of Transportation ("GDOT"); and

WHEREAS, a commercial driveway permit is required from GDOT for the construction and maintenance for certain points of ingress and egress serving portions of this property on Moreland Avenue, including landscape medians to be located in the GDOT right-of-way; and

WHEREAS, as a condition of allowing the landscape medians, GDOT requires that the City enter into a Right-of-Way Mowing and Maintenance Agreement for these landscape medians; and

WHEREAS, in return for the City's agreement to enter into such agreements with GDOT, Trees Atlanta has agreed to undertake the City's obligations under the Right-of-Way Mowing and Maintenance Agreement at no cost to the City; and

WHEREAS, the construction and maintenance of these medians is consistent with the City's transportation plan for this area.

NOW THEREFORE, be it resolved by the Council of the City of Atlanta as follows:

SECTION 1. That the Mayor is hereby authorized to execute on behalf of the City of Atlanta, a Right-of-Way Mowing and Maintenance Agreement, substantially in the form attached as Exhibit A, provided that an agreement with a third party to undertake the City's obligation is first executed.

SECTION 2. That the Mayor is hereby authorized to execute on behalf of the City of Atlanta an agreement with Trees Atlanta, or a third party designated by Trees Atlanta that is acceptable to the City, that is substantially in the form attached as Exhibit B, and which will provide for Trees Atlanta or its designee to undertake the City's obligations under the Right-of-Way Mowing and Maintenance Agreement as set forth in the document attached as Exhibit A.

SECTION 3. The City Attorney be and hereby is directed to negotiate, prepare and/or review the agreements necessary to effect the intent of this resolution provided that such agreements are in compliance with the conditions set forth herein and provided that there is no cost to the City.

SECTION 4 That all resolutions and parts of resolutions in conflict herewith be and are hereby waived.

EXHIBIT A

RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT

By and Between

THE

GEORGIA DEPARTMENT OF TRANSPORTATION

AND

THE CITY OF ATLANTA

REFERENCE: COMMERCIAL DRIVEWAY PERMIT # 03-2004-012-089
SR 42, MORELAND AVENUE, DEKALB COUNTY – THE SEMBLER COMPANY

THIS AGREEMENT made and entered into this ____ day of _____, 20____
by and between the **DEPARTMENT** of Transportation, an agency of the State of Georgia,
hereinafter alternately referred to as “**DEPARTMENT**” or “**LICENSOR**”, and APPLICANT
hereinafter referred to as “**LICENSEE**”.

WHEREAS, the **DEPARTMENT** desires to enter into a public/private partnership to
perform certain services relating to mowing and trimming within **DEPARTMENT’S** right of
way, hereinafter called the “**PROJECT**”, and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that, if such
permission is granted to the **LICENSEE**, **LICENSEE** shall bear all costs and liability associated
with the **PROJECT**; and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that they are
qualified and experienced to provide such services and the **DEPARTMENT** has relied upon
such representations;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:

ARTICLE I
SCOPE OF PROJECT

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The **PROJECT** location and concept as well as the duties and responsibilities of the **LICENSEE** are defined and set forth in Article XI **WORK PLAN** of this Agreement, and further enumerated and described in Exhibit A – Application and Permit for Special Encroachment. This document is attached hereto and incorporated by reference as if fully set out herein. The required Special Encroachment permit is to be approved and issued by the **DEPARTMENT**.

Should the **LICENSEE** desire that these maintenance services be performed by a third party, **LICENSEE** and the third party shall enter into subsequent agreement, whereby the **LICENSEE** shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in Article XI **WORK PLAN**. The Agreement between **LICENSEE** and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the **DEPARTMENT**, and all liability associated with the **PROJECT** shall be borne by **LICENSEE** and any third parties, as set forth in Article VIII, herein.

ARTICLE II
EXECUTION OF CONTRACT AND AUTHORIZATION
TIME OF PERFORMANCE

Time is of the essence in this agreement. The **LICENSEE** shall execute this Agreement and return it to the **DEPARTMENT** within ten (10 days) after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement within thirty days after receiving a signed and executed copy of the Agreement.

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, trim, and maintain that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall be indefinite unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

ARTICLE III
SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that **LICENSEE** shall not engage in any activities or conduct any work which would

be considered to be outside the scope of the permission granted to **LICENSEE** by the **DEPARTMENT**. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

ARTICLE IV

ASSIGNMENT

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in Article I, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

ARTICLE V

CONTRACT DISPUTES

This Agreement shall be deemed to have been executed in Fulton County, Georgia and all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

ARTICLE VI

INSURANCE

Prior to beginning work, the **LICENSEE** shall obtain and certify to the **DEPARTMENT** that it has the following minimum amounts of insurance coverage:

- (a) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
- (b) Public Liability Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$300,000) on an account of any one occurrence, or proof of self insurance.
- (c) Property Damage Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000), or proof of self insurance.
- (d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the **PROJECT**.

Insurance shall be maintained in full force and effect during the life of the **PROJECT**. The **LICENSEE** shall furnish annually to the **DEPARTMENT**, certificates of insurance evidencing such coverage. These certificates shall also provide that the insurance will not be modified or canceled without a 30 day prior written notice to the **DEPARTMENT**. Failure by the **LICENSEE** to procure and maintain the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The **LICENSEE** shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with the **DEPARTMENT**.

ARTICLE VII

COMPENSATION

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any and all issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such change shall only be permitted by a supplemental agreement as set forth in Article III herein. Any supplemental agreements involving compensation shall be subject to the review of the **DEPARTMENT'S** Legal Affairs Administrator, and must be approved in writing by the **DEPARTMENT**. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE VIII

RESPONSIBILITY FOR CLAIMS AND LIABILITY

LICENSEE NOT AGENT OF DEPARTMENT

LICENSEE, and all successors and assigns thereto, shall save harmless the **DEPARTMENT**, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the performance of work assigned to **LICENSEE** under this Agreement. **LICENSEE** further agrees that they shall be fully responsible for injury or damage to landscaping within the right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, if **LICENSEE** causes the damage. These indemnities shall not be limited by reason of the listing of any insurance coverage.

It is further understood and agreed that **LICENSEE**, or any successor or assigns thereto, in the conduct of any work involved in the **PROJECT**, shall not be considered the agent of the **DEPARTMENT** or of the State of Georgia.

ARTICLE IX

TERMINATION OF CONTRACT

The **DEPARTMENT** may terminate this contract for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this contract to terminate upon the date specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in Article VII up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this contract at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

ARTICLE X

COMPLIANCE WITH APPLICABLE LAW

The undersigned certify that:

A. This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.

B. The provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State have been complied with in full.

C. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full.

The covenants herein contained shall, except as other wise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE XI

WORK PLAN

Routine maintenance of planted median islands on Moreland Avenue between Hardee Street and Caroline Street.

Scheduled Work:

seasonal maintenance of trees and plants
replacement of dead or diseased trees and plants
replacement of mulch
regular removal of trash and debris in planted islands

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed
their seals the day and year above first written.

Signed, Sealed, and Delivered this _____ day of _____, 2004.

GEORGIA DEPARTMENT OF TRANSPORTATION

Commissioner or designee
ATTEST:

Treasurer

LICENSEE:

(Title)

Sworn to before me this

_____ day of _____, 20____.

NOTARY PUBLIC

My commission expires _____, _____.

EXHIBIT B

STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT made and entered into this _____ day of _____, 200____ by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, and Trees Atlanta, Inc., ("Trees Atlanta") a corporation licensed to do business in the State of Georgia.

WITNESSETH

WHEREAS, the development of certain real property owned by The Sembler Company is located in the City of Atlanta on Moreland Avenue between Hardee Street and Caroline Street; and

WHEREAS, Moreland Avenue is a state route under the control of the Georgia Department of Transportation (the "Department"); and

WHEREAS, a commercial driveway permit is required from the Department for the construction and maintenance for certain points of ingress and egress serving portions of this property on Moreland Avenue, including landscape medians to be located in the Department's right of way; and

WHEREAS, as a condition of allowing the construction of the landscape medians, the Department requires that the City enter into a maintenance and mowing agreement for those landscape medians; and

WHEREAS, in return for the City's agreement to enter into such agreements with GDOT, Trees Atlanta has agreed to undertake the City's obligations under the maintenance and mowing agreement at no cost to the City; and

WHEREAS, the construction and maintenance of these medians is consistent with the City's transportation plan for this area; and

WHEREAS, Resolution, _____ adopted by the City Council on _____, 2005 and approved by the Mayor on _____, 2005 and made a part hereof by reference, authorized the Mayor to enter into this agreement with Trees Atlanta under the terms specified herein; and

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta ("City") and Trees Atlanta, Inc. hereby agree that, as a condition for the City agreeing to enter into a Right of Way Mowing and Maintenance Agreement for Moreland Avenue between Hardee Street and Caroline Street with the Georgia Department of Transportation (the "M&M Agreement") and for certain other accommodations concerning the development of real property located adjacent to the area that is the subject of the M&M Agreement that Trees Atlanta, Inc. will perform the obligations which the City has agreed to perform or will agree to perform pursuant to the M&M Agreement which is attached as Exhibit A.

2.

THE EFFECT OF THE M&M AGREEMENT

Trees Atlanta stipulates that it is aware of and has fully reviewed the M&M Agreement entered into or to be entered into between the City and the Department and attached as Exhibit A. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of Trees Atlanta to the City than the obligations of the City to the Department as set forth in the M&M Agreement, the terms of the M&M Agreement shall be considered as further clarifying and explaining the obligations of Tree Atlanta in this Agreement unless it is specially stated in this Agreement that such variation in obligations is permitted. Trees Atlanta agrees that to the greatest extent possible its obligations perform under this Agreement should be construed to be equal to the obligations of the City to perform under the M&M Agreement.

- a. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of Trees Atlanta or any claims of any other person or persons made upon Trees Atlanta.
- b. Should the Department terminate the M&M Agreement for any reason, Trees Atlanta agrees that all parts of the streets, landscape medians or sidewalks, which are covered by this Agreement shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of the streets, landscape medians and sidewalks of the City prior to the execution of this Agreement.
- c. This Agreement is being executed with full knowledge that the M&M Agreement may or may not have been fully executed at the time of execution of this Agreement. The obligations of Trees Atlanta under this Agreement shall be binding on Trees Atlanta as of the time of full execution of the M&M Agreement.

3.

TIME OF PERFORMANCE

Trees Atlanta shall commence the performance of its obligations pursuant to the terms of this Agreement no later than thirty (30) calendar days after execution of the M&M Agreement by each of the parties thereto.

4.

PROFESSIONAL RESPONSIBILITY

Trees Atlanta shall assume all responsibility undertaken by the City in the M&M Agreement with respect to the professional quality of those tasks required by the Scope of Work set forth in the M&M Agreement (the "Project").

5.

NO COMPENSATION PAID COSTS NOT FUNDED BY DEPARTMENT OF CITY

Trees Atlanta and the City hereby acknowledge and agree that the M&M Agreement contains no provisions for compensation or cost reimbursement to be paid to the City by the Department.

- a. Trees Atlanta acknowledges and agrees that it will not be paid by the City or the Department for the work to be done under this Agreement and/or the M&M Agreement.
- b. Trees Atlanta agrees that it will bear all costs or pay all expenses necessary to complete the Project or fulfill the obligations set forth in this Agreement.
- c. Trees Atlanta acknowledges and agrees that Resolution 05-R-0608 does not authorize the City to commit funds to the Project. All costs and expenses necessary to complete the Project and to fulfill the requirements of this Agreement are solely the responsibility of Trees Atlanta.
- d. In the event of termination of the Project by the Department, the obligations of Trees Atlanta are governed by Paragraph 2, subpart b of this Agreement.

6.

RIGHT OF INSPECTION AND APPROVAL OF WORK

The City and the Department shall have the right to inspect any part of work performed under this Agreement. Trees Atlanta acknowledges and agrees that the performance of the Scope of Work must satisfy all City ordinances in addition to any requirements of the Department under the M&M Agreement. Trees Atlanta stipulates that it has read and understands that the M&M Agreement states that should the Department be required to conduct any inspections and supervision of the project beyond that which would occur in the ordinary course of Department's maintenance activities that the City is required to reimburse the Department for the cost of the Department's inspection and supervision. Trees Atlanta shall be required to pay to the City the actual amount of reimbursement charged by the Department to the City prior to the time that such reimbursement is required to be paid to the Department.

7.

NO ASSIGNMENT

The rights and obligations set forth in this Agreement may not be assigned, sublet, or transferred without prior written permission of the City.

8.

INSURANCE

During the term of the M&M Agreement and this Agreement, Trees Atlanta shall maintain insurance in full force and effect and shall furnish to the City certificates of insurance evidencing such coverage. The City shall be named as an additional insured in each policy related to the Project. These certificates of insurance shall provide that the insurance will not be modified or canceled without a 30 day prior written notice to the City. At least 15 days prior to the expiration date or dates of expiring policies, Trees Atlanta shall deposit certified copies of renewal or copies of new policies or other acceptable evidence of insurance with the City. The following types of insurance shall be required:

Workmen's Compensation Insurance in accordance with the laws of the State of Georgia; and

Public Liability Insurance in an amount of not less than \$100,000 for injuries, including those resulting in death to any one person and in an amount of not less than \$300,000 on account of any one occurrence; and

Property Damage Insurance in an amount of not less than \$50,000 from damages on account of any occurrence, with an aggregate limit of \$100,000.

9.

VALUABLE PAPERS

Trees Atlanta acknowledges that the M&M Agreement between the Department and the City obligates the City to provide Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field drawings or other similar data relating to the work covered by the Project. Trees Atlanta stipulates that it has requested the City to waive the provision of Valuable Papers Insurance. Trees Atlanta and the City hereby acknowledge and agree that the City shall be responsible for the maintenance of any and all original plans, drawings, field drawings or other similar data relating to the work covered by the Project and will be kept on file as a matter of course by the Municipal Clerk of the City of Atlanta and that Trees Atlanta shall be provided with copies of all data received by the Municipal Clerk as it relates to these agreements.

10.

INDEMNIFICATION

Trees Atlanta acknowledges that the M&M Agreement between the Department and the City obligates the City to the Department in various respects for the maintenance of certain improvements to Moreland Avenue and Trees Atlanta agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the M&M Agreement except where the City specifically assumes an obligation or responsibility under this Agreement. Trees Atlanta further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities, which Trees Atlanta has agreed to assume including any subsequent obligations or responsibilities which may be imposed on the City by the Department under the M&M Agreement. The language of this general assumption of obligation and responsibility and general indemnity shall not be construed to waive or supersede any previous language of this Agreement, which more specifically describes any other assumption of responsibility or obligation or indemnification, but shall be construed to supplement those specific assumptions of responsibilities and obligations or indemnifications. The language of this general assumption of responsibility or obligation and general indemnity shall be construed in the broadest sense to include all parts of the M&M Agreement under which Trees Atlanta has assumed any responsibility or obligation and includes as a part of the indemnity, an agreement by Trees Atlanta to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to the M&M Agreement, regardless whether such claims, expenses or costs arise from other services furnished by or on behalf of the City pursuant to the M&M Agreement, construction delays, personal injury, injuries to property or any other type of claim, expense or cost. Trees Atlanta acknowledges and agrees that all agreements for indemnity provided by this Agreement shall survive its termination.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, James Shelby, Interim Commissioner of the Department of Planning and Community Development, or any successor, whose address for the purpose of this Agreement shall be:

James Shelby, Interim Commissioner
Department of Planning and Community Development
55 Trinity Avenue, S.W, Suite 1450,
Atlanta, GA, 30303-3520
404-330-6070

with a copy to: David E. Scott, Commissioner of Public Works
Department of Public Works
55 Trinity Avenue, S.W, Suite 4700
Atlanta, GA, 30303-3520
404-330-6240

Trees Atlanta, Inc. appoints as its designated representative for the receipt of notices, submittals, or other communications, Marcia D. Bansley, whose address for the purpose of this Agreement shall be:

Ms. Marcia D. Bansley
Executive Director
Trees Atlanta, Inc.
96 Poplar Street, NW
Atlanta, Georgia 30303
404-522-4097

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the Return Receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail. Either party may change its designated representative by notice to the other as provided herein or may name other persons as sub-designees for the receipt of specific types of materials, such as engineering plans, blueprints or other voluminous documents, provided however that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee

12.

COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive compliance with any City ordinance.

13.

PERMITS AND LICENSES

In connection with the performance of the services called for by this Agreement, Trees Atlanta shall obtain, at its own expense, all permits and all licenses required by all municipal, state and federal authorities, now required to be in force, or which may hereafter, be required to be in force.

14.

GENERAL PROVISIONS OF THIS AGREEMENT

- a. The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- b. No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- c. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- d. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- e. The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.
- f. Any agreement between Trees Atlanta and any other person shall specify that the City shall have the right to enforce the terms of the agreement

without the consent of Trees Atlanta and that the obligations of any person under any agreement with Trees Atlanta shall survive the termination of the existence of this Agreement and/or the termination of the existence of Trees Atlanta.

15.

ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed the seals.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

TREES ATLANTA, INC.

By: _____

Name: _____

Attest: _____

Notary Public

My Commission Expires: _____

[SEAL]

CITY OF ATLANTA

Municipal Clerk (Seal)

By: _____
Shirley Franklin, Mayor

RECOMMENDED

Commissioner, Department of
Planning & Community Development

Commissioner, Department of
Public Works

APPROVED

Chief Financial Officer

APPROVED AS TO FORM

City Attorney